

1 For causes of action against defendants Chad Meredith Hurley, AVOS Systems, Inc.
2 ("Avos"), and Does 1 through 20 inclusive, plaintiffs Kim Kardashian and Kanye West allege as
3 follows:

4 **INTRODUCTION**

5 1. This lawsuit, based on the principle that a contract must mean something, seeks to
6 prevent defendant Hurley from profiting from his misconduct in dishonoring contractual
7 commitments he made for the benefit of plaintiffs Kardashian and West.

8 2. Hurley, eager for opportunities to promote his new but foundering business
9 enterprise (MixBit), finagled entry into an exclusive event to which he had not been invited, and
10 which involved two people (Kardashian and West) whom Hurley had never before met.

11 3. After tagging along with someone who was invited, Hurley was permitted to stay
12 only after giving his word – including in writing – that he would not publish any aspect of the
13 event. Such a condition is typical for well-known celebrities such as Kardashian and West, who
14 may choose to record such events and then select the medium, manner and timing by which to
15 disseminate the events to the public.

16 4. Immediately after giving his word to honor the condition required for his
17 attendance at the event, Hurley turned around and violated the condition. Hurley filmed the event
18 – which turned out to involve not merely a birthday celebration for Kardashian, but also an
19 unexpected engagement proposal by West – and then posted it on MixBit.

20 5. That Hurley did these things out of desperation is readily apparent. Despite his
21 extraordinary financial success in creating YouTube, which was sold in 2006, Hurley has ever
22 since sought his "second act." This has become exceedingly elusive to Hurley: in 2010, he
23 unsuccessfully attempted to set up a Formula One racing team, which lost all of its money and was
24 disbanded. In May 2012, Hurley formed a web service named Zeen, which also failed and has
25 been slated for closure in 2013.

26 6. With consecutive flops on his hands, Hurley then launched MixBit, which also
27 quickly ran into trouble. Following a lackluster launch and unsuccessful ensuing debut, Hurley
28 sought to salvage MixBit from its dour beginnings. An opportunity to do so appeared to Hurley

1 when he learned of an October 21, 2013 event featuring West and Kardashian. Despite not being
2 invited, and not knowing either West or Kardashian, Hurley sought to procure his own attendance
3 in order to capitalize on the event and promote MixBit. The number of guests was exceedingly
4 small – only several dozen in total – notwithstanding the enormous size of the venue (AT&T Park,
5 the home of the San Francisco Giants).

6 7. Following his arrival, and as a condition of staying at the event, Hurley was
7 required to – and did – agree not to publish any images of or from the event. Hurley did so
8 verbally, including in writing, and to emphasize the importance of this promise, as well as to
9 prevent its later denial, Hurley was photographed with his signed contract in hand, as is illustrated
10 by the photograph below of Hurley displaying his contractual commitment not to publish anything
11 connected with the event:



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18 8. Hurley is well aware of such contractual restrictions – including not to usurp a
19 person's rights to tell a story on his or her own terms, and for his or her own emotional and
20 financial benefit. Indeed, MixBit itself cautions users to be "thoughtful about what is in your
21 video" because "You are responsible for what you do on the Service" and "If you don't have the
22 right to submit your User Content... it may subject you to liability." Avos and its owners earn
23 their livelihood based on their intellectual property rights, and are extraordinarily attuned to their
24 value and importance.

25 9. Undeterred by the contractual restrictions to which he had just agreed, Hurley opted
26 to exploit and capitalize upon the extreme public interest he knew would attach to the event, in
27 order to boost the fortunes of his underperforming business venture. Hurley did so
28 notwithstanding his knowledge that the exclusive property rights at issue belonged to Kardashian

1 and West and/or their assigns. Nor was it of any concern to Hurley that the very business model
2 of MixBit – one which allows interactive manipulation of images between the person posting an
3 image, and anyone else in the world who wants to change, mock or denigrate it – made it virtually
4 inevitable that the misappropriated images of West proposing to Kardashian would soon be
5 distastefully altered.

6 10. Immediately after dishonoring his agreement and unlawfully exploiting the footage,
7 Hurley compounded his misconduct by publishing a press release, and by publicizing the posting
8 to more than a half million Twitter followers and other potential MixBit customers.

9 **THE PARTIES**

10 11. Plaintiff Kim Kardashian is, and at all times relevant hereto was, an individual
11 residing in the City and County of Los Angeles, State of California.

12 12. Plaintiff Kanye West is, and at all times relevant hereto was, an individual residing
13 in the City and County of Los Angeles, State of California.

14 13. Plaintiffs are informed and believe, and thereon allege, that defendant Hurley is,
15 and at all times relevant hereto was, an individual residing in the State of California.

16 14. Plaintiffs are informed and believe, and thereon allege, that defendant Avos is, and
17 at all times relevant was, a Delaware corporation with its principal place of business in the State of
18 California, and is registered with the California Secretary of State to conduct business in the State
19 of California.

20 15. Plaintiffs are informed and believe, and thereon allege, that Hurley was the co-
21 founder of MixBit, an unknown form of business that is wholly owned by Avos, that Hurley is an
22 officer, director, owner, and/or control person of Avos, and that Hurley further personally acts as
23 Avos' agent for service of legal process.

24 16. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as
25 Does 1 through 20, inclusive, and therefore sues said defendants by such fictitious names.
26 Plaintiffs will amend this Complaint to allege their true names and capacities once they have been
27 ascertained.

28 17. Plaintiffs are informed and believe, and thereon allege, that at all times herein

1 mentioned, each of the defendants was acting as the agent and representative of each of the other
2 defendants, and was acting within the purpose and scope of said agency and representation.
3 Plaintiffs are further informed and believe, and thereon allege, that each of the defendants
4 authorized and ratified the conduct of each of the other defendants that is herein alleged.

5 **AVERMENTS COMMON TO ALL CAUSES OF ACTION**

6 18. Plaintiff Kanye West planned to propose marriage to plaintiff Kim Kardashian. He
7 sought to surprise her by having the event at a baseball stadium, yet to invite a small number of
8 the couple's close friends, preserve the memories on film, and air the film at a time and in a
9 manner of his and Kardashian's choosing.

10 19. As a result, all guests were required to sign a written contract, which defendant
11 Hurley signed on or about October 21, 2013, stating, in pertinent part, "CONFIDENTIALITY: I
12 acknowledge and agree that any and all information disclosed to me or obtained by myself
13 concerning or relating to the Program, including but not limited to... the activities occurring in
14 connection with the Program... (collectively, the 'Confidential Information') shall be strictly
15 confidential, and I hereby agree not to disclose any such Confidential Information to any
16 individual or entity. I acknowledge and agree that any disclosure of such Confidential Information
17 is in violation of this agreement and shall constitute a material breach of this agreement and shall
18 cause Producer and its employees, contractors, agents, licensees and assigns irreparable injury. I
19 further agree that in the event of any disclosure by myself in violation of this agreement, I shall be
20 liable to Producer and its employees, contractors, agents, licensees and assigns, and I agree that
21 Producer and its employees, contractors, agents, licensees and assigns shall have the right to
22 utilize all available remedies in law or equity, including both financial and injunctive relief, to
23 seek retribution for any breach of this confidentiality provision. I expressly agree that Producer
24 and its employees, contractors, agents, licensees and assigns shall be entitled to any and all relief
25 available to Producer and broadcasters as reasonable compensation for the significant harm which
26 will be incurred by Producer and its employees, contractors, agents, licensees and assigns as a
27 result of any such disclosure and/or breach of this agreement by myself." This written contract
28 shall hereinafter be referred to as the "Written Contract."

1 20. The Producer, as defined in the Written Contract, was M Cable Television, Inc., an
2 entity with whom Kardashian and West frequently work and worked. Plaintiff Kanye West was a
3 contractor of the Producer, having entered into an express contract shortly before the October 21,
4 2013 ceremony for the Producer to have the right to film and broadcast the marriage proposal from
5 Kanye West to Kim Kardashian (the "Event"). Plaintiffs were intended third party beneficiaries of
6 the October 21, 2013 Written Contract between the Producer and Hurley. Further, the rights to
7 sue Hurley under or for breach of the Written Contract and any damages caused by such breach or
8 non-compliance were transferred to E! Entertainment Television, LLC, which assigned such rights
9 to plaintiffs via a written assignment.

10 21. Pursuant to the terms of the Written Contract, "In the event of a dispute arising
11 from or in connection with this agreement, I agree that the internal laws of the State of California
12 shall govern... and that venue for the resolution of any dispute shall be Los Angeles, California."

13 22. Plaintiffs are informed and believe, and on that basis allege, that Hurley was aware
14 that the exclusive rights to broadcast the Event were possessed by a party other than Hurley, Avos,
15 or MixBit.

16 23. Nevertheless, Hurley proceeded to try to turn the event into one starring himself,
17 broadcasting the images he knew were the exclusive property rights of someone else, and acting as
18 if he were a sponsor of the event. By way of example only, and without limitation, Hurley:

19 A. Posted a video of the Event of MixBit's website.

20 B. Placed the video on the MixBit website in a manner that would allow others to
21 disassemble, manipulate, and alter it.

22 C. Kept it on the website, even after being contacted by plaintiffs' representatives and
23 being told he had no right to publish images of the Event.

24 D. Tweeted about the Event to the better part of a million people on his Twitter
25 account.

26 E. Went so far as to issue a press release, which he sent to *Vanity Fair* and other
27 publications, as if Hurley were an official spokesperson for, or representative of, Kanye
28 West and Kim Kardashian.

1 24. Plaintiffs are informed and believe, and on that basis allege, that Hurley acted as
2 aforesaid because he and his YouTube co-founder (who is also a co-founder with Hurley of
3 defendant Avos) had previously sold YouTube for approximately \$1.65 billion, and Hurley was
4 anxious to replicate his success with another enterprise. After the Zeen fiasco and the car racing
5 bust, Hurley and Avos therefore set up MixBit, which "went live" on or about August 8, 2013.
6 Unlike YouTube, on which customers post video images, MixBit emphasizes the importance of its
7 users collaborating with one another by making available readily usable on-line tools permitting
8 them to post video footage and then splice and manipulate the video of one another. It therefore
9 enables and prompts customers to engage in unlimited cross-pollenization, which also very
10 obviously empowers them to commit substantial mischief.

11 25. Defendants purport to protect the creativity that this potentially permits, while
12 simultaneously circumscribing its obvious potential for misuse, by prominently displaying on their
13 website robust rules and guidelines for (a) proper behavior, and (b) protection of the property
14 rights of others. However, while defendants give lip service to these protections, in reality, they
15 fall somewhere between a fig leaf and a smokescreen. By way of example only, and without
16 limitation, in the *MixBit community guidelines* portion of their website, the defendants state:

17 A. ***"Only add content that you create yourself or are authorized to use"*** (emphasis
18 added).

19 B. ***"We allow or encourage you to mix and reuse community video content, but just***
20 ***because something is OK in its original context does not automatically mean it will be***
21 ***acceptable in other projects. It's important to respect the original creator and avoid***
22 ***using content out of context"*** (emphasis added).

23 C. "Content that is ... purely intended to shock audiences will be gated."

24 ***"With great power comes great responsibility... Please don't be a jerk!"*** (emphasis in
25 original).

26 26. Notably, however, in an effort to save costs and maximize profits at the expense of
27 any meaningful enforcement of their Guidelines, defendants' website announces that "we rely on
28 our community to flag content for review where it doesn't meet these guidelines." This is the

1 functional equivalent of a real community with laws but no law enforcement, just occasional and
2 unpredictable roaming gangs of vigilantes.

3 27. Plaintiffs are informed and believe, and on that basis allege, that in the
4 approximately two and one-half months between its launch in early August, 2013, and the Event
5 in late October 2013, MixBit was not successful and had not achieved significant internet traffic or
6 revenue. As a result, defendants decided that they needed something spectacular to re-launch the
7 website and put it on the national (or international) stage. When Hurley heard of the Event, to
8 which he was not invited, he saw his opportunity to crash the party on the coattails of an invited
9 guest and then steal plaintiffs' property. Rather than keep his word and honor his commitment,
10 Hurley – not content with the vast profits he made from selling YouTube – instead elected to
11 renege on his promises and broadcast the Event on MixBit.

12 28. Instead of permitting the organic relationship between or among MixBit customers
13 touted by defendants' new business, in this instance, defendants themselves were the ones not just
14 allowing, but actually *initiating*, the interaction, by seeding their own website with
15 misappropriated property rights of the very nature they warn others not to post.

16 29. The Event took place the night of October 21, 2013. On October 24, 2013,
17 plaintiffs, through legal counsel, communicated by letter with Hurley about the impropriety of his
18 actions.

19 30. However, Hurley, while providing a perfunctory apology, said he "wasn't aware it
20 [his Tweets, MixBit postings, and press releases] would get so much attention." This excuse was
21 duplicitous on its face, as people do not issue press releases for the purpose of *not* attracting
22 attention.

23 31. Hurley also stated that "I only posted it after seeing multiple pictures and videos on
24 Instagram." This, too, was inaccurate and misleading. Virtually all of the images of the Event
25 that were publicly available and broadcast (other than perhaps momentarily) at the time of
26 Hurley's postings were from defendants, and plaintiffs are informed and believe, and on that basis
27 allege, that (a) no other Event guests published press releases on the Event before Hurley did so;
28 and (b) no other Event guests published video of the proposal before Hurley did so.

1 Consequently, Hurley's excuse for acting improperly (essentially "others also did so, so once I
2 saw that, I thought I would join in") is – apart from being untrue – no excuse at all.

3 32. Moreover, between their receipt of the letter from plaintiffs' lawyer on October 24,
4 2013, protesting defendants' publication of the Event, and the date of the filing of this lawsuit,
5 defendants have done nothing to remove their improperly published images of the Event from
6 their website.

7 33. Kanye West and Kim Kardashian are entertainers. Entertainers get paid for their
8 work. They often sell the rights to filmed events, personal or otherwise. These rights have value
9 in significant part because they require the consent of the party granting the rights, and because
10 these rights are not available to others. Exclusive rights, such as those sold by plaintiffs to
11 publication of video of the Event, are particularly valuable. If people violate these rights of
12 plaintiffs, they are of substantially diminished value.

13 34. Defendants, who are in the intellectual property business, including Hurley – who
14 made a fortune exploiting the filmed images of others – know more than virtually anyone the
15 value of an entertainer's commitment that the rights being sold are – and will remain – with the
16 licensees or purchasers, and only with the licensees or purchasers.

17 35. Defendants also have a specifically – indeed almost uniquely – heightened
18 awareness of both the meaning and the value of intellectual property rights. The intellectual
19 property rights of Avos' investors form the foundation of their business. Defendants' own MixBit
20 website states, in its *Terms of Service* section, under its "**You are responsible for what you do on**
21 **the Service**" (emphasis in original) heading, that "**If you don't have the right to submit your**
22 **User Content for such use, it may subject you to liability**" (emphasis added), and that "**When**
23 **you add content to the Service you are representing that you have all the necessary rights to**
24 **do so**" (emphasis added).

25 36. Under their **Copyrights and Trademarks: Don't Infringe Other People's**
26 **Rights!**" (emphasis in original) caption, defendants further state "We have the right to and will
27 terminate users' accounts if they repeatedly infringe or are believed to be repeatedly infringing
28 other people's rights."

1 37. Another quote from defendants' website is "**If you don't have the right to submit**
2 **your User Content... it may subject you to liability**" (emphasis added).

3 38. The MixBit website states that its *Terms of Service* section was established August
4 8, 2013, and was updated September 20, 2013, a mere month before the Event.

5 **FIRST CAUSE OF ACTION**

6 **(Breach of Written Contract Against All Defendants)**

7 39. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

8 40. On or about October 21, 2013, Hurley entered into the Written Contract, quoted in
9 part in paragraphs 19 and 21, above, by which Hurley agreed to maintain the confidentiality of the
10 Event and not to broadcast or otherwise publish images from the Event.

11 41. Plaintiffs West and Kardashian are intended third-party beneficiaries of the Written
12 Contract, the parties to which intended West and Kardashian to benefit from the Written Contract,
13 both financially and by way of maintaining control of the rights to publicize the Event. In
14 addition, the rights to proceed against Hurley under the Written Contract for breach of the Written
15 Contract and all damages resulting therefrom were assigned to plaintiffs, who now own these
16 rights.

17 42. M Cable Television, Inc. and E! Entertainment Television, LLC performed all
18 actions required of them under the Written Contract, except those which were excused by Hurley's
19 breach thereof.

20 43. Hurley, individually and in combination with Avos, breached the Written Contract
21 by publishing video of the Event on their website, MixBit, by publishing information about the
22 Event via Twitter, and by issuing a press release about the Event.

23 44. As a direct and proximate result of defendants' breaches, plaintiffs have been
24 damaged in an amount to be proven at trial, in excess of the jurisdictional minimum of this Court.

25 **SECOND CAUSE OF ACTION**

26 **(Fraud by way of False Promise, Against All Defendants)**

27 45. Plaintiffs reallege and incorporate the allegations contained in the paragraphs above
28 as though fully set forth herein.

1 46. On or about October 21, 2013, Hurley promised plaintiffs that he would maintain
2 the confidentiality of the Event, and that he would not publish any images or other recordings of
3 or from the Event.

4 47. This promise was important to plaintiffs, and they would not have permitted Hurley
5 to attend the Event had he not given this promise.

6 48. Plaintiffs are informed and based thereon believe that Hurley did not intend to
7 perform this promise when he made it.

8 49. Hurley intended that plaintiffs rely on this promise because Hurley knew that he
9 would not be permitted to attend the Event had he not given this promise.

10 50. Plaintiffs reasonably relied on Hurley's promise. Plaintiffs had no reason to
11 believe that Hurley would not keep his promise.

12 51. Hurley did not maintain the confidentiality of the Event as promised, and did
13 publish images and/or other recordings of the Event as he promised he would not do. As alleged
14 above, Hurley made video recordings of the Event, including the marriage proposal, and, in
15 combination with Avos, published recordings of the Event on the MixBit website. As alleged
16 above, Hurley also violated his promise to maintain the confidentiality of the Event by publishing
17 information about the Event via Twitter and by issuing a press release.

18 52. Plaintiffs were harmed by Hurley's failure to comply with his promise, in an
19 amount to be proven at trial, in excess of the jurisdictional minimum of this Court. Specifically,
20 and by way of example only, the value of the rights to license or sell images and recordings of the
21 Event, and the broadcast value of the Event itself, were diminished by defendants' conduct.
22 Moreover, the value of Kardashian's and West's rights of publicity in the future has been
23 diminished because defendants, through their conduct, have cast a cloud on the exclusivity of any
24 such future rights. Being under the belief that their planned broadcast may be upstaged prior to its
25 publication, purchasers and licensees will not value such intellectual property rights as highly,
26 their revenue sources, including advertisers, will not pay as much for broadcast rights tied to such
27 events, and the value not only of the Event, but of future events, will therefore be diminished, with
28 potential buyers and licensees offering reduced consideration for such rights.

53. Plaintiffs' reliance on Hurley's promise was a substantial factor in causing their harm.

54. Plaintiffs are informed and based thereon believe that Hurley's actions alleged herein were despicable, fraudulent, oppressive, and done in conscious disregard of plaintiffs' rights, thereby entitling plaintiffs to an award of punitive damages.

THIRD CAUSE OF ACTION

(Quasi Contract/Unjust Enrichment , Against All Defendants)

55. Plaintiffs reallege and incorporate the allegations contained in the paragraphs above as though fully set forth herein.

56. By the conduct alleged above, defendants Hurley and Avos have received a benefit to which they are not entitled, specifically, an increase in the revenues and value of their website, MixBit, through exploitation of images of the Event to which they have no rights, and by their unauthorized and wrongful publication of information about the Event.

57. Defendants obtained the aforementioned benefits at plaintiffs' expense. The rights to the Event and to the images they exploited on MixBit are owned by plaintiffs and were not transferred or assigned to defendants.

58. As between plaintiffs and defendants, it is unjust for defendants to retain the benefits they obtained by publishing information about the Event and by exploiting images of the Event.

59. In these circumstances, a contract should be implied in law by which defendants are required to transfer to plaintiffs all benefits they have realized by publishing information about the Event and by exploiting images of the Event.

60. Plaintiffs are therefore entitled to disgorgement and restitution of all benefits obtained by defendants at plaintiffs' expense, in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment against defendants as follows:

1. for compensatory damages according to proof;
2. for actual damages according to proof;

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- 1 3. for consequential damages according to proof;
2 4. for punitive and exemplary damages in an amount appropriate to punish defendants
3 and deter others from engaging in similar misconduct;
4 5. for disgorgement of all benefits received by defendants by publishing information
5 about the Event and by exploiting images of the Event, according to proof; and
6 6. for such other relief as is just and proper.

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8 Dated: October 31, 2013

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